

## DEMOCRATIC GLOOM: AN INSTITUTIONAL FUNCTIONALIST ANALYSIS OF INDIA

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### ABSTRACT

*Institution-building is a cherished dream as well as a challenge for orderly human living. As conscience-keepers, various institutions in different climes tend to fulfill the aspirations of the members who invest time and energy in the shaping up and survival of such institutions. Both intrinsic and extrinsic factors have been at play in the decline and death of many an institution, as history suggests. It is beyond doubt that institutional vibrancy is the bedrock of democracy as a preferred political alternative. Shockingly, a huge cloud of pessimism hovers over the global democratic order. Indian democracy is no exception either. A modest heuristic, in no way critical, an attempt has been made to comprehend the gloom that the Indian democratic polity has been subjected to due to the apathy of the masses, over-ascrptive hunger for power among the elite and the careless abandon of the inept incumbents in various institutions that have bled the system white and betrayed the trust of the masses. The present paper is a tribute to the institutionally embedded spirit of the ones who harbour some degree of trust in the institutional anodyne for human profligacies.*

**KEYWORDS:** Coalition, Democratic Gloom, Executive, Institution, Judiciary, Legislature & Political System

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### 1. INTRODUCTION

A political system, a la any biological or mechanical one, can be assumed to pass through stages of birth, growth, decay and finally death. The term 'system' here has been used in a restricted sense – a collection of interdependent parts with specific functions that can contribute to the attainment of its goal which the system is planned for. A political system depending on its form and the men who matter in it, can have objectives and approaches *sui generis*. Different forms of state-monarchy, aristocracy, oligarchy, authoritarianism, communism or democracy have emerged, thrived, or have withered away depending on the degree of legitimacy they enjoyed and legitimacy is not timeless.

Among all the hitherto existing variants, democracy stands out because this is the governance system where mandate of the governed determines who will govern them and secondly, it has spatially spread along a sizeable part of the globe starting since the beginning of the 20<sup>th</sup> century. In a democracy the supreme power rests with the voting multitude. Democracy is nothing more nor less than the rule of the whole people expressing their sovereign will by their votes. "That which was once the divine right of the king has become the overriding majesty of the people"<sup>1</sup>. No other definition of democracy can be pricier than these words used by James Bryce.

"In 1992, 2500 years of democracy were enthusiastically celebrated across the world. While it is usual

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for the birthdays of great leaders and the anniversaries of nations and revolutions to be commemorated in this manner, no other political ideal has ever been celebrated in this way,”<sup>II</sup> writes Niraja Gopal Jayal. As per a report of the Pew Research Centre (by Drew De Silver, as of the end of 2017, 96 out of 167 countries with populations of at least 500,000, (57%) were democracies of some kind and 21 (13%) were autocracies. Nearly 46 (28%) other countries exhibited signs of both democracy and autocracy. Broadly speaking, the share of democracies among the world’s governments has been on an upward trend since the mid-1970s and now sits just shy of its post-World War II record (58% in 2016).<sup>III</sup>

Max Roser writes that during the 19<sup>th</sup> century, most of the world’s population lived in colonial empires, autocracies or anocracies. The late 19<sup>th</sup> century saw a limited expansion of democracies. Since then, there has been a general upward trend in the share of the world’s population living in democracies save for the period before and during World War II. During the second half of the 20<sup>th</sup> century, colonies gained independence and more countries became democratic. Today more than half the world’s population live in democracies.<sup>IV</sup> Francis Fukuyama concurs that “Overall, there has been remarkable worldwide progress in democratization over a period of almost 45 years, raising the number of electoral democracies from about 35 in 1970 to well over 110 in 2014.”<sup>V</sup>

Numbers no more enthuse because the mismatch between the lofty ideals that were supposed to be the tenets of democracy are unbridgeably apart from the actualities that are happening across the democratic world. The specialties of democracy that made it distinct from the other political alternatives, stand shamefully compromised because of the self-indulgence of all stakeholders whether they are the sovereigns (the people) or the delegates (the representatives of the people). “.... the facts are obscured to most people by the half-assimilated ideas and sonorous or seductive phrases that fill the air; and few realize exactly what are the realities beneath the phrases.” (Bryce 1921). As if the time has stood still between the present and when Bryce used these words. The ardent critics of democracy seem vindicated in their observations. “A generally acknowledged folly” (Alcibiades, 415 BC), “the worst form of government except for all the rest” (Winston Churchill) are a few expressions that signify the state of democracy at the present. The comparative position of democracy in Churchill’s assessment cannot hide the overall scorn that is inherent for all performing governments.

Since 1995, support for key democratic principles has eroded, while a surprising degree of openness to non-democratic alternatives has appeared. Disconcertingly, it is younger citizens who are most likely to express a weaker sense of attachment to democracy. Overall levels of support for democracy remains reasonably high but the trajectory of opinion is troubling, and could portend a grim future of democratic deconsolidation for the United States and other established democracies.<sup>VI</sup>

Expressing concern over the electoral gain of far-right political parties in a number of established democracies, Paul Howe expresses surprise as to the future of democracy. The traditional pillars of democracy like rule of law, respect for minority rights, checks and balances on the different organs of state exercised by one another, he feels, are gradually vanishing.

In a study which corroborates with the erosion in confidence on democratic values,

Foa and Mounk have made the following findings.

- In 1995, 24 percent of U.S. respondents to the WVS (World Values Survey) felt that it would be better to have a strong leader who does not have to bother with the legislature and elections. In the 2011 wave of the study, this had climbed to 32 percent.

- In 1995, one in sixteen U.S. respondents thought that it would be good if the army ruled; by 2011, this share had grown to one in six.
- In the 2011 wave, 41 percent of the older generation (those born in the inter war and early postwar periods felt it was “absolutely essential” in a democracy that “civil rights protect people’s liberty”. Only 32 percent of those born since 1988 (the so-called millennials) shared this view.
- In the 2006 and 2011 waves combined, 72 percent of U.S respondents born before Word War II deemed it “absolutely important to live in a democracy. Among millennials, only 30 percent agreed.<sup>VII</sup>

The Economist Intelligence Unit (EIU) measures democracy scores of states worldwide. There is cause for some concern in what it reveals. In its finding, the average global democracy score in 2016 fell to 5.52 down from 5.55 in 2015 on a scale of 0 to 10. The Democracy Index used for measuring the scores is based on rating of electoral processes and pluralism, the state of civil liberties, the functioning of government, political participation, and political culture in more than 160 countries. Norway emerges as the strongest democracy in 2016 by scoring 9.93 in the Democracy Index and the other countries among the top ten democratic states after Norway are Iceland, Sweden, New Zealand, Denmark, Canada, Ireland, Switzerland, Finland, Australia. The US with a score of 7.98 (in 2016) comes close to be described as a ‘flawed democracy.’<sup>VIII</sup> It should be a veritable affront to the high-voltage slogan of democracy world-wide.

## 2. AN INSIGHT ON INDIA

India is a political heavy-weight in the global camp of democracies. But a close functionalist institutional scrutiny of the system, of late, hints at alarming rot that has set in here horizontally as well as vertically. The rot seems pervasive across institutions of the state and it has percolated down to such an extent that the top statutory and constitutional functionaries, the ones who once used to be viewed with awe and admiration, are also not free from the base instincts of misuse of office for personal and private gains. Such dangerous manifestations are quite disturbing because the persons at the helm are emulated by the commoners. Ethics and morals have been given short shrift at the altar of avarice and appeasement. The state, as well as the society, are at the doorsteps of doom because rule of law and the norms of society are violated with impunity. Such state of affairs moves the reasoners, who are in a remarkable minority, to diagnose the maladies and prescribe measures for saving the day and showing hope for the future.

The present attempt is a micro-analysis with a limited scope to draw attention to the institutional betrayal that tends to demoralize the masses and doesn’t augur well as far as the future of democracy is concerned. More so, in the wake of authoritarian consolidation as is exemplified by China and the vanguards of democracy like the US and India showing palpable signs of democratic erosion, time is rife for an unbiased stock-taking and imminent course correction

The selected institutions taken up for analysis and the structural failures, in part or whole resulting therefrom, are only indicative and for academic engagement only.

## 3. LEGISLATIVE LOGJAM

When democracy took roots in India, the people were jubilant and ecstatic as they experienced great relief after years of colonial bondage. They were also getting introduced to a newfound political space which they were not at all familiar with for centuries. The popular mood then has been aptly captured by Nehru. “At the headquarters of the provincial governments, in the very citadels of the old bureaucracy, many a symbolic scene was witnessed .... suddenly, hordes of

people, from the city and village, entered these sacred precincts and roamed about almost at will. They were interested in everything; they were into the Assembly chamber where the sessions used to be held; they even peeped into the Ministers' rooms. It was difficult to stop them for they no longer felt as outsiders, they had a sense of ownership in all this, although it was all very complicated for them and difficult to understand [Nehru (1946) 1989; 369-70].<sup>IX</sup>

The criterion of leadership and the aptitude for representation were determined on the basis of sacrifices one had made by suffering at the hands of the British or the contribution made to freedom struggle. The harbingers of electoral representation in India "imbued politics with an ethical code and imparted to it the concept of 'service', of duty, of the Gandhian emphasis on dharma", writes Rajni Kothari.<sup>X</sup> Much water has flowed down the Ganga since the infancy of democracy in India. The metamorphosis around the vistas of democracy within seven decades has been so over-paced that it is hard to trace any continuum between the past and the present. The political values that a democracy boasts of are hardly present in the practices of many a democracy, India being no exception either. As a litmus test, the nature of elections that are being periodically organised for government formation have been engrossed in economics so overwhelmingly that it is difficult to judge whether the mandate of the people is a sacrosanct duty or a tradeable commodity.

The elections in India are gradually scaling new heights in terms of unprescribed expenditure. The last elections (held in 2019) cost around \$ 10 billion, according to the assessment made by Milan Vaishnav and Devesh Kapur(cited by S.Chakrabarti). Shaubhik Chakrabarti makes a comparison between the election expenditure in the US and that in India in order to show how the undermining impact of money is outrageous in a developing economy like India.<sup>XI</sup> The 2016 presidential election in the US involved an expenditure of \$ 6.5 billion. The US is a \$19 trillion economy whereas India is, in comparison, a \$2.7 trillion economy. The centre for Media Studies, New Delhi estimated that the cost of the 2019 elections was \$ 8.5 billion, which is convincingly higher than the figure involved in the US, though slightly less than the figure claimed by Vaishnav and Kapur. "Even if you measure everything in purchasing power parity and not exchange term rates – by PPP (purchasing power parity), India's economy is roughly half the size of America's – the comparison still holds as much force", states Chakrabarti. Chakrabarti has shown how pre-poll bumps in cash flow have been witnessed in India during the last several elections. Currency with the public – a measure of how much cash is floating around in the economy -grows sharply in the months, or the financial year, before national elections. "Year-on-year growth of currency in public for 2018-19, the financial year just before 2019 polls, is 17.3percent, a sharp jump from previous years in the five year period (excluding one remonetization / demonetization period). Such pre poll bumps in cash use have happened for all recent elections. And the pre-poll bump for 2019 is among the highest in the last seven national elections".

The election expenditure in India, the major part of which is unaccounted for, can pale into insignificance major welfare interventions, as Chakrabarti has argued. The \$ 10 billion when converted into Indian rupees at a modest exchange rate of \$1= Rs70, amounts to nearly Rs 70, 000 crore. The last allocation for Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was Rs 60,000 cr., the budgeted amount for BJP's PM- KISSAN scheme is Rs. 75000 cr., or even the annual oil subsidy of the government amounts to Rs. 38000 cr. From this comparison, it is implied how politicians make a mockery of election laws and catalyze the spread of the virus of corruption in the mind of the general public. Democratization of corruption thrives on the anti-democratic assaults by major stakeholders in democracy. Fukuyama states that "there is a high degree of correlation between levels of corruption and poor state performance."<sup>XII</sup> Corruption as such is a major problem across the systems, and democracies are more vulnerable in this respect.

### 3.1 Coalitions, Defections

Coalition politics in India at national as well as at state levels has unraveled many shameful realities that can give credence to the statement made by G.B.Shaw, ‘Politics is the last resort for the scoundrel.’ The word ‘last’ makes the statement gratuitous of the majority of the present breed, instead if ‘first’ or ‘only’ replaces ‘last,’ that would seem more faithful to the true self of the diehard demagogues. Dhananjaya Mahapatra, by citing PRS (a Delhi-based non-profit organization engaged in legislative research) data writes in ‘Legally Speaking’ that during 1967-71, there were 142 defections in parliament, 1969 cases of shifting of loyalty by MLAs (Members of Legislative Assembly) in assemblies.<sup>XIII</sup> There has been a significant stretch of coalition government at the national level since the time of P.V. Narasimha Rao up to that of the present PM, Narendra Modi which has witnessed the unusual dominance of regional coalition partners and the central leadership increasingly succumbing to such pressures. It is only the last election of 2019, though fought on coalition calculus, that could give a decisive verdict to BJP (303 seats in the last Lok Sabha) despite NDA (National Democratic Alliance-the BJP led coalition at the centre) sharing power with many other partners.

The culture of throwing baits for migratory legislators to defect, as Mahapatra states, generally started since 1967 when 16 states went to polls and Congress could not claim majority in them. Most recently, we have witnessed the mean political drama unfolding in quick succession in Karnataka, Goa and Madhya Pradesh. The political see-saw involving Congress and JD(s) coalition and BJP in Karnataka unfolded in the shape of the protagonists moving from one five-star resort to another over a period of 18 days until finally the deal was done and BJP staged a comeback to power after the 14-month coalition between Congress and JD(s) collapsed. It created much outrage among the public who gave vent to their anger and disenchantment with the three political parties through social media but the ‘actors’ were unfazed.

In quick succession, the defection staged a replay in the Goa chapter. Ten out of 15 Congress MLAs defected to BJP which is in power in the state and the bargaining game came to its successful end with a hidden offer of ministerships to the defectors. “Opportunistic defectors do not lose; instead they win elections irrespective of which party’s banner they wave,” writes Sagarika Ghose.<sup>XIV</sup> She gives an interesting account of one Goa MLA, Atanasio ‘Babush’ Monserrate, one of the most controversial figures in Goa politics, who has defected six times in two decades always associating with which government is in power. Interestingly, while he was contesting for the Panaji seat, the BJP had vociferously campaigned against him with various criminal charges including rape.

Madhya Pradesh offers a recent proof of no-holds-barred dog-fight among political parties in India when the insatiable hunger for political dividend, the ultimate end, lurks in the politicians’ minds. No political party or politician is free from the crippling grip of such an unprincipled weapon of last resort. Congress-led government was formed in Madhya Pradesh in December 2018. Only after fifteen months, in March 2020, there was a defection of 22 congress MLAs owing allegiance to Jyotiraditya Scindia resigned thereby reducing the slender majority on the basis of which Kamal Nath had formed the Congress government in the state. Over a period of two weeks, the defecting MLAs were kept as hostages in Bengaluru until the reigning government collapsed without facing the Supreme Court mandated floor / majority test on March 20 (2020). Such political games are so complex that their comprehensive understanding or explanation itself is inconclusive unless the crisis is exclusively analysed.

All such political defections, whether voluntary or under coercion /influence /allurement of any type, is a betrayal of the mandate of the people which the defector originally secured in the political affiliation at the time of election. Still, they do so repeatedly because they know after the election is over, the winner can ride roughshod over the people’s

mandate for the fulfilment of personal agenda and the constituents have no clue to reign in the deviants. Besides, it is not the case that the people are always against the representative's opportunism.

Keeping the swinging mood of the political pendulums in view the anti-defection law was passed in 1985 (the 10th Schedule of the Indian constitution) in order to check such political misdemeanour. The mention of the law is made more in its violation by the political parties or candidates without exception than in its observance. The Supreme Court of India in the Manoj Narula judgement [2014 (9) SCC 1] observed that "Democratic values survive and become successful where the people at large and the persons-in-charge of the institutions are strictly guided by constitutional parameters without paving the path of deviancy and reflecting in action the primary concern to maintain institutional integrity and the requisite constitutional restraints."<sup>xv</sup> But there is a discernible transformation in the role and perception of the ruler and the ruled in the new democracies of today and India has come to witness a type of patron-client relationship between the two in which the stakeholders on both sides are prepared to go to any extent for self-gratification. Sagarika Ghose describes that the Indians now are ruled by the "imperious raj of the Big State".<sup>xvi</sup> The politicians are the agents of the Big State whose nod is essential for all income-generating activities like liquor licenses, mining leases, real estate deals or permission for a variety of businesses, reasons Ghose. As a result, local strongmen have captured polities completely and space for alternative politics has shrunk. "No wonder politicians can flit uncaringly between five-star resorts, while outrage is the citizens' only resort," concludes Ghose.

Atul Kohli's diagnosis of governability crisis in India is centred around his concept of authority vacuum, strengthens the coalitional conundrum in the country. The authority vacuum, according to Kohli, "...contributes to many of the problems of governability: coalitional instability, the emergence of low-quality leaders with demagogic rather than programmatic appeal, the growing significance of toughs and hoodlums as de facto brokers of local power, ineffective and corrupt local governments, and the increasing tendency to resort to violence to settle political conflicts."<sup>xvii</sup>

#### **4. EXECUTIVE IMPROPRIETY: THE ELECTION COMMISSION OF INDIA**

The Election Commission of India, which got some teeth during the 1990s' when T.N. Seshan became the Chief Election Commissioner (CEC) has always been asserting to hold free and fair elections. Since then the people of India reposed some faith in the statutory institution. Holding of free and fair elections has not been an easy job going by the experience of the biggest democratic exercise in the world. Starting from the notification until about the counting / declaration of results, the job is a Herculean task that involves the deployment of massive human and material resources to complete the process. The stress level of all election functionaries, top to bottom, literally pushes them to the breaking point.

The numerous political parties and thousands of candidates (in an Indian general election) leave no stone unturned for a wishful outcome in the election. The cut-throat competition among political parties and candidates has driven them to the brink of all possibilities to appropriate the people's mandate. Every election at any level, has pushed the candidates to unexpected levels of innovation in designing palliatives for the (largely) morally decrepit electorate. The ECI (Election Commission of India) model code of conduct for the guidance of political parties and candidates during an election binds all to follow them scrupulously. Everybody is aware of the sincerity in its implementation. One such code states that all parties and candidates shall avoid scrupulously all activities which are "corrupt practices" and offences under the election law such as bribing of voters, intimidation..... and the code is quite explicitly explanatory and exhaustive.

Just before the general election of May 2019, as were reported in different sections of print media, the enforcement authorities made seizures of varieties of allurements/inducements meant for distribution among voters in different constituencies throughout the country. According to an estimate, the value of total seizures of all varieties amounted to, in EC's estimate, Rs. 1619 crore, of which drugs/narcotics were worth Rs. 709 Cr., cash Rs. 400 Cr., gold/silver Rs. 318 Cr., liquor 163 Cr. and freebies Rs. 29 Cr. The top five states in terms of seizures made were Gujarat (512 Cr.) Tamil Nadu (286 Cr.), Andhra Pradesh (Rs. 159 Cr.), Punjab (158 Cr.) and UP (Rs. 145 Cr.), Gujarat has a double distinction of topping the total seizures list and the other, an ominous one, leading drugs haul list.<sup>xviii</sup>

This goes without saying that drugs/narcotics and liquor are emerging as potential vote seeking bait in different parts of India. Particularly states like Gujarat and Punjab were in the news because of the widespread supply of drugs during the pre-poll time. While Gandhiji had a powerful impact in the framing of the Directive Principles in Part IV of the constitution (one of which prescribes for protecting the youth of the country from the spurious effect, of alcoholic drinks, drugs and other psychotropic substances) the state of his birth has emerged as the front runner in drugs haul as well as the violation of electoral code of conduct at a crucial time when Indian democracy is seeking a fresh mandate. A dangerous trend affecting the social and political sphere is the use of intoxicants (which are harmful not only for the health of the people, they are spoilers of families as well) by the politicians to bag the votes of citizens. In a democratic welfare state, the people's representatives have elevated (or degraded) themselves to the level of drugging the voters for securing their votes.

A democracy where votes are supposed by the contestants in elections to be tradable (notes chasing votes), lays the foundation of its own downfall. The bedrock of democracy is public opinion and it has to be expressed in a free and fair manner without any trappings of parochialism or selfishness. Sincere discharge of duties of citizenship has turned out to be a hard bargain in today's sectarian, polarized, ethnically complex, societies more so where electoral participation can hardly be said to be truly universal. Urban, educated voters in India have shown woefully apathetic attitudes at the time of elections, leaving the mandate in a way fractured and largely the rural, poor, uneducated or semiliterate voters actually determine the future government. Such a trend conduces the criminal and corrupt elements to upstage the genuine candidates, if there are any, and go on to vitiate the atmosphere by luring the susceptible voters.

Fukuyama observes that "democracy is a driver of clientelism at low levels of per capita income".<sup>xix</sup> It is not that only the economically disadvantaged fall prey to the shenanigans of the manipulators of democracy. The latter are cunning enough to have something irresistible for almost every segment of the electorate. Crony capitalism to throwing away doles (by compensating a daily wager or throwing food packets for the hungry) the inventory is inexhaustible in trickeries for luring the voters.

Common sense is apt to crucify the ECI for the unfair practices in electioneering. The ECI can absolve itself of all accusations by showing everything in record. Codification or declaration of rules and regulations is not that difficult in the land of the 'lawyers' paradise'. What is glaring is a vast body of institutions planned and prepared in India hardly have any teeth. Only by chance or accident sometimes somebody (like a T. N. Seshan and a very few others in other branches of public service) make a mark and justify the institution. A lot many are mere shadow warriors, take up public service to accomplish their own goals. Some also succumb to the black hole of maladministration because the networks of fixers and racketeers is unbelievably intimidating than that of the well-meaning ones. The awe-inspiring 'vyapam' (Madhya Pradesh) case or the so-called 'godmen' running terror and criminal networks from custody are only like the proverbial tip of the

iceberg that the whole society and polity are being tentacled by.

After all, what can the three member-ECI assisted by some officers and staff nationwide can do to clean up the system unless there is due cooperation from all quarters? A pyramid stands tall when all its rungs fit in properly. But institutions are lifeless without incumbents; the sense of purpose and relevance are dependent on the quality of manpower they possess.

Ironically, 66 ex-bureaucrats wrote a letter to the President of India (Ram Nath Kovind) just before the parliamentary and assembly elections of May 2019 alleging EC's inaction against poll code violation, particularly by the ruling party (BJP). The Prime Minister's (PM) address to the nation about the successful launch of India's first anti-satellite (A-SAT) weapon, release of a web-series 'Modi: A Common Man's Journey', launching of the NaMoTV channel, Uttar Pradesh (UP) Chief Minister (CM) Yogi Adityanath dubbing the Indian Army as "Modiji ki sena" were some instances of MCC (Model Code of Conduct) violations on which the EC's neutrality was disturbing in the opinion of the ex-bureaucrats. "Hon'ble Rashtrapati ji, we are deeply concerned about the weak-kneed conduct of the ECI which has reduced the credibility of the constitutional body to an all-time low. Any erosion in people's confidence in the fairness of the ECI has very grave consequences for the future of our democracy and we hope that the gravity of the situation will be appreciated by the ECI".<sup>xx</sup> The letter writers included veterans like J.F. Rebeiro, former DGP of Punjab police, Jawahar Sircar, former CEO of Prashar Bharati, Salahuddin Ahmad, former Chief Secretary of Rajasthan, Najeeb Jung, former Lieutenant Governor of Delhi, Meiram Borwankar, former Pune Police Commissioner et.al. who possess sufficient insider knowledge and experience of working within the Indian system. They went on to add further, "We wrote to express our deep anguish that the Election Commission of India which has had a long and honourable record of holding free and fair elections despite the enormous challenges of scale and complexity is suffering from a crisis of credibility today".

## 5. JUDICIAL JITTERS: THE SUPREME COURT OF INDIA

On 12 January 2018, the Indian nation woke up to an unprecedented, unseemly shocker happening around one of its most hallowed institutions, the sheet anchor of India democracy – the Supreme Court of India. Four senior most judges of the apex Indian judicial institution-Justices J. Chelameswar, Ranjan Gogoi, Madan B. Lokur and Kurian Joseph held a press conference at the official residence of justice J. Chelameswar and openly attacked the (then) Chief Justice of India Dipak Misra for the CJI not paying attention to their concerns. As it filtered out in the press, the matter of dispute was on the issue of allocation of cases to judges. As a matter of practice, sensitive cases are usually to be allocated to senior judges. No such norm was followed under CJI Dipak Misra, as the aggrieved judges alleged. Therefore a lot of allegations, counter allegations were exchanged between the two camps leaving the people of the country perplexed and the Indian judiciary dented. The press conference was an "extraordinary event in the history of judiciary" in India.

The Supreme Court of India has not only been held in high esteem by the Indians alone, it has a global image of maintaining impartiality and independence besides the American Supreme Court. Gradually and shockingly the entire judicial system with its fulcrum in the Supreme Court of India, has been plagued by a series of criticisms due to the nature of appointment of judges, the paralysing vacancy of judges in subordinate courts and most importantly judicial corruption, even sexual harassment complaints against the judges at different levels. Due to constraint of scope, it is obvious that the crisis in the Indian judiciary or for that matter, operations in any part of the Indian political system, the attempt for academic analysis cannot but be sketchy. As a matter of fact, the problems (affecting India democracy) are so complex and serious that any segregated approach may not be entirely explanatory and exhaustive. But introspection and intent for

course correction can positively help eradicate some of the shortcomings.

On the issue of allocation of (sensitive) cases, the established tradition authorizes the CJI as the ‘master of the roster’, to be the sole deciding authority; hence the activity of the four disgruntled judges was exceptionable and uncalled for, according to some legal luminaries. Former Union Law Minister Shanti Bhushan suggested that a collegium of judges should determine the allocation of cases among SC judges in order to get rid of the practice of master of the roster principle which entitles the CJI to be arbitrary. But the Attorney General of India, K. K. Venugopal was against such a proposal because the collegium would enable the judges to distribute cases among themselves in motivated manner.

To make matters worse, recently some demoralisingly serious charges of misdemeanor have been made against the Indian judiciary. ‘Fixers’, ‘cash for judgement club’ have been allegedly active in Delhi which, if found correct, will not only mar the judiciary it will irreparably erode the Indian democratic superstructure.

A lawyer, Utsav Bains, alleged that he was offered rupees 1.5 crore by a person named ‘Ajay’ to frame CJI Ranjan Gogoi in a false case of sexual harassment and three dismissed SC employees ganging up with fixers. “We and this system will not survive if the allegations are true. We have to find out the truth at all levels. Can we keep our eyes shut ? Entire country will lose faith in the system”,<sup>XXI</sup> observed the special bench (of justices Arun Mishra, R.F. Nariman, Deepak Gupta) probing the allegations.

The government (of India) seemed protective of Justice Gogoi. The Union Minister Arun Jaitley stated that “Last few years have witnessed consolidation of institution destabilisers in a major way. Many of these destabilisers represent Left or ultra-Left views. They have no electoral base or popular support but enjoy disproportionate presence in the media and academia”.

It is a matter of serious concern that, Justice Dipak Misra and Justice Ranjan Gogoi, both working in the capacity of CJI during their respective tenures, have been the target of criticism because of (alleged) inappropriate behaviour. While the former was at the centre of the national shocker (in form of the four judges’ press conference), the latter has been accused of sexual harassment by a woman employee of the SCI, working as a junior court assistant. In her affidavit to all other judges of the SCI, she requested for her complaint to be heard by an inquiry committee to be constituted by retired Supreme Court judges. On the contrary, a panel of three judges headed by CJI Gogoi took up the matter and she was finally dismissed from the service. All this happened during 2018-19.

Legal luminaries are of the opinion that the panel does not have the mandate to deal with a complaint filed by a dismissed junior court assistant against a judge of the SC, much less the CJI who nominates an SC judge to head the committee which deals with complaints of sexual harassment. The Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations prohibit such arrangement. Besides, the Veeraswamy Judgement [1991 (3) SCC 655] in a five-judge constitution bench of the SC observed that “The CJI being the head of the judiciary is primarily concerned with the integrity and impartiality of the judiciary. Hence, it is necessary that the CJI is not either from the evidence of the prosecution and/or evidence from the defence”.<sup>XXII</sup>

Justice (CJI) Gogoi finally headed the 3 judge bench that heard the sexual harassment plaint of the woman junior SC assistant. How a person against whom the complaint was made could preside over a bench and then recuse when the time came to dictate orders? As legal norms prescribe, anyone facing a sexual harassment charge must immediately cease and desist from discharging the duties he is statutorily or constitutionally tasked with. This would create a situation where

it would be difficult for the highest constitutional functionaries to carry on with their assigned duties, concludes Dhananjaya Mahapatra.

The Supreme Court in 1991, while dealing with corruption charges against a former High Court Chief Justice held that “A judicial scandal has always been regarded as far more deplorable than a scandal involving either the executive or a member of the legislature. The slightest hint of irregularity or impropriety in the court is a cause of great anxiety and alarm”.<sup>XXIII</sup>

The prevailing system conduced CJI Gogoi to take to the forbidden path. “Nobody can catch me on money part, so they found this. I don’t think a junior court assistant is behind this..... Two offices are absolutely independent, that of PM and CJI. If the judges are to be vilified like this, why would any good person want to become a judge and retire with a bank balance of Rs. 6.8 lakh (like me).... ? Regardless of what has happened, I will decide cases in the rest of my tenure of seven months. Nobody can stop me”,<sup>XXIV</sup> asserted Justice Gogoi.

Justice Gogoi’s assertion provided the seal of approval to liberal Indians’ abhorrence for the sacrifice of judicial independence hardly after four months of his retirement. He accepted his nomination to the Rajya Sabha. “We have discharged our debt to the nation - was the statement made by Justice Gogoi along with the three of us..... on January 12, 2018. I am surprised as to how Justice Gogoi..... has compromised the noble principles of independence and impartiality of the judiciary”,<sup>XXV</sup> reacted Justice Kurian Joseph who was one among the four calling the sensational press conference in 2018. Describing the independence of the judiciary as one of the basic structures of the constitution, Justice Joseph further stated, “Our great nation continues to be firmly grounded on the basic structure and constitutional values, thanks mainly to the independence of the judiciary. The moment this confidence of the people is shaken..... the tectonic alignment of the nation built on solid foundations is shaken”.

According to Arghya Sengupta (Research Director, Vidhi Centre for Legal Policy), 37 out of 50 Supreme Court judges had post-retirement jobs from the government. “None of this justifies Gogoi’s nomination, in fact it shows how deep the rot runs”.<sup>XXVI</sup> Judges accepting political appointments also compromise the constitutional principle of separation of powers. Those who value integrity will obviously keep their distance from corridors of power because they know post-retirement assignments influence pre-retirement judgements. But such values are increasingly turning out to be empty pronouncements. There is no denying the fact that such appointments were unconscionable in the past and they continue to be so in the present.

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